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E.O. 12958: N/A

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SUBJECT: Framework Convention on Tobacco Control
(FCTC): Canadian response to demarche

Ref. SECSTATE 106632

1. Health Canada's response concerning reftel demarche was unequivocal: Canada will not support deletion of FCTC Article 30 at the upcoming World Health Assembly (WHA). In Canada's view, the text of the Convention is now in its final form and it is too late in the process to revisit the text and remove the reservations clause. End summary.

2. Health Canada's Director General of International Affairs, Ed Aiston, delivered an unequivocal message to ESTH Counselor and ESTH Specialist on the question of Canadian support for our proposal to delete article 30 of the FCTC. The Canadian position is: The text of the Convention is now final; Canada will not support opening of the text and deletion of Article 30.

3. Aiston remarked that delegates at the WHA are generally not those officials who negotiated the FCTC. As a consequence, opening the text and managing the consequences in this different milieu, is of concern to Canada. Aiston noted in particular that the text contains a number of fragile compromises that Canada would not want to have reexamined and possibly subjected to change at the WHA. Aiston also pointed out that Canada has concerns that removal of the reservations clause could allow some countries to dilute the impact of the FCTC. (Aiston made clear to us that he would not put the United States in that group.) Finally, the draft final text has already been submitted to the relevant ministers for their review.

4. The prior delivery of the demarche to officials at the Department of Foreign Affairs and International Trade (DFAIT) yielded a polite audience. They indicated that generally the GoC was flexible on the issue of reservations. But they made it clear that Health Canada is where the decision resides on the FCTC. Ross Snyder, Deputy Director of UN Specialized Agencies Division, and Shelley Whiting, Deputy Director of the United Nations, Human Rights and Economic Law Division, received our demarche, but noted that they believe that the current draft final text contains references to constitutional limits in Article 13 that address USG concerns about infringement of Constitutionally-guaranteed rights. They also noted their worry that our effort to revisit Article 30 could embolden Germany to once again raise its concerns with the advertising proscriptions of the FCTC.

5. Comment: Although Aiston delivered an unwelcome message from the GoC, he prefaced it with remarks that one of Canada's objectives had been to see the United States sign and ratify the FCTC. Canada, he noted, had worked hard in the negotiations as a good faith partner and had made compromises to achieve results amenable to American participation. Indeed, Aiston added, Canada had made its best efforts during the negotiations phase to get rid of the reservations clause. That effort was, however, unsuccessful and Canada considers it is now too late to revisit the issue. End comment.

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